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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,056

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Ralf Prenzel

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29177 7590 08/04/2008  
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EXAMINER

SAFAIPOUR, BOBBAK

ART UNIT

PAPER NUMBER

2618

MAIL DATE

DELIVERY MODE

08/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/511,056	<b>Applicant(s)</b> PRENZEL ET AL.	
	<b>Examiner</b> BOBBAK SAFAIPOUR	<b>Art Unit</b> 2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/21/2008 has been entered.

Claims 1-30 have been cancelled. **New claims 31-38** have been added.

### ***Response to Arguments***

Applicant argues that Ratschunas clearly fails to disclose signaling, upon non-delivery of the data to the second communications unit, with the transmission status message, whether the data could not be delivered to the second communications unit or whether the data could have been delivered, but were not received by the second communications unit.

The Examiner respectfully disagrees. This limitation broadly teaches that when the message has not been delivered, signaling, with the transmission message, if the data cannot be delivered or the data could have been delivered, but was not received. The Examiner notes that this limitation states “whether the data could not be delivered to the second communications unit or whether the data could have been delivered, but were not received by the second communications unit.” Therefore, only one of these conditions needs to be met for a reference to disclose the claimed limitations. Ratschunas teaches that the MMSC 2 (read as the first communication unit) accesses the receiving condition information of the multimedia message (step S5) and decides whether the receiving condition is met. In case the receiving condition is

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not met (NO in step S6), a message indicates that the MS 4 (read as the second communications unit) is inactive or busy. This message is sent to the originator that the MS 4 is not reachable (figure 2, steps S6-S7; page 12, line 31 to page 13, line 4). In other words, the multimedia message is supplied to the MMSC 2 (read as first communication unit). With the multimedia message, the MMSC 2 receives the receiving condition and decides if the receiving condition is met. If it is met, the multimedia message is transmitted to the MS 4 (read as second communication unit). If the condition is not met, a message (read as transmission status message) that the MS 4 is inactive or busy is sent (read as signaling, upon non-delivery of the data to the second communications unit, whether the data could not be delivered to the communications unit). (figure 2; page 12, line 22 to page 13, line 4)

The recited claim language is given the broadest reasonable interpretation. As a result, the argued features are written such that they read upon the cited references; therefore, the previous rejection still applies.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 31-38** rejected under 35 U.S.C. 102(e) as being anticipated by **Ratschunas (WO 01/28171 A1)**.

Consider **claim 31**, Ratschunas discloses a method for transmitting data having multimedia content from a first communications unit (read as MMSC 2) to a second communications unit (read as MS 4) in a telecommunications network (figure 2; page 12, line 22 to page 13, line 4), the method comprising:

transmitting at least one transmission status message assigned to the data to the first communications unit (figure 2; page 12, line 22 to page 13, line 4; read as a message that the MS 4 is inactive or busy is sent); and

signaling, upon non-delivery of the data to the second communications unit, with the transmission status message, whether the data could not be delivered to the second communications unit or whether the data could have been delivered, but were not received by the second communications unit (figure 2; page 12, line 22 to page 13, line 4; If the condition is not met, a message that the MS 4 is inactive or busy is sent).

Consider **claim 38**, Ratschunas discloses a switching arrangement for transmitting data in a telecommunications network from a first communications unit to a second communications unit, comprising an apparatus for producing a transmission status message which is assigned to the data to be transmitted to the second communications unit (figure 2; page 12, line 22 to page 13, line 4; read as a message that the MS 4 is inactive or busy is sent),

the apparatus providing a signaling, upon non-delivery of the data to the second communications unit, with the transmission status message to the first communications unit, whether the data could not be delivered to the second communications unit or whether the data

could have been delivered, but were not received by the second communications unit (figure 2; page 12, line 22 to page 13, line 4; If the condition is not met, a message that the MS 4 is inactive or busy is sent).

Consider **claim 32**, and **as applied to claim 31 above**, Ratschunas discloses the claimed invention wherein the data could not be delivered due to an incorrect address of the second communications unit or because the second communications unit was not available within a period of validity of the data. (figure 2; page 12, line 22 to page 13, line 4; If the condition is not met, a message that the MS 4 is busy is sent)

Consider **claim 33**, and **as applied to claim 31 above**, Ratschunas discloses the claimed invention wherein the data were not received because they were intentionally not downloaded to the second communications unit (figure 2; page 12, line 22 to page 13, line 4; the multimedia message was not sent because the condition was not met,).

Consider **claim 34**, and **as applied to claim 31 above**, Ratschunas discloses the claimed invention wherein the signaling comprises providing an item of information concerning the non-deliverability of the data in the transmission status message (figure 2; page 12, line 22 to page 13, line 4).

Consider **claim 35**, and **as applied to claim 31 above**, Ratschunas discloses the claimed invention wherein the non-deliverability of the data applies if one of the correct receipt of the

data and of a recipient notification message concerning the data to be transmitted to the second communications unit is not acknowledged (read as receiving condition not met) by the second communications unit via a respectively associated confirmation message (figures 1-3, page 12 line 21 to page to page 14 line 9).

Consider **claim 36**, and **as applied to claim 31 above**, Ratschunas discloses the claimed invention wherein the telecommunications network includes a switching arrangement via which the data is transmitted from the first communications unit to the second communications unit, and wherein the switching arrangement establishes the information and signals the information with the transmission status message to the first communications unit. (figures 1-3, page 12 line 21 to page to page 14 line 9)

Consider **claim 37**, and **as applied to claim 31 above**, Ratschunas discloses the claimed invention wherein the data is transmitted via a Multimedia Messaging Service using a Wireless Application Protocol. (page 1, lines 12-28)

### ***Conclusion***

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Hand-delivered responses** should be brought to

Customer Service Window  
Randolph Building

401 Dulany Street  
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bobbak Safaipoor whose telephone number is (571) 270-1092. The Examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Matthew Anderson can be reached on (571) 272-4177. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

/Bobbak Safaipoor/  
Examiner, Art Unit 2618

July 31, 2008

/Matthew D. Anderson/

Supervisory Patent Examiner, Art Unit 2618